

SEP 15 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

JAMES M. MCLENNAN,

Defendant - Appellant.

No. 05-30191

D.C. No. CR-02-00477-1-ALH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, District Judge, Presiding

Submitted September 13, 2006^{**}
Portland, Oregon

Before: HAWKINS, SILVERMAN, and GOULD, Circuit Judges.

James M. McLennan appeals the district court's denial of his motion to suppress child pornography found on his computers, CD-ROM and floppy disks.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The search warrant affidavit supported the magistrate judge's finding that there was probable cause to believe that evidence of a crime would be found on the defendant's home computer. *United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006) (en banc), *petition for cert. filed*, (U.S. July 7, 2006) (No. 06-5251); *United States v. Hay*, 231 F.3d 630, 633-36 (9th Cir. 2000); *United States v. Lacy*, 119 F.3d 742, 745 (9th Cir. 1997).

The defendant failed to make a substantial showing that the agent recklessly omitted material facts from the affidavit. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). The record supports the district court's finding that the agent did not recklessly admit facts. In any event, the omitted facts were not material.

AFFIRMED.